

REMARKS

The non-elected claims stand rejected as being anticipated under 35 U.S.C. §102(e) over U.S. Patent No. 7,209,746 to Kirino (Kirino U.S.). Preliminary it is believed that Kirino US does not qualify as a reference under 35 U.S.C. §102(e) as, for reasons provided, it does not anticipate any claim of the present application, and it is believed the reference can be excluded as a reference under 35 U.S.C. §103 via 35 U.S.C. §102(e) for purposes of a rejection based on obviousness.¹

Nevertheless, applicants have found that Kirino US does have counterpart published applications which qualify as references under 35 U.S.C. §102(a). PCT and Japanese counterparts to Kirino US were cited in an Information Disclosure Statement dated November 14, 2008. The qualifying PCT and Japanese references under 35 U.S.C. §102(a) are referred to collectively herein as "Kirino." As the claims herein are distinguished from Kirino, applicants have not completed an investigation as to whether Kirino can be removed as a reference. Nevertheless, applicants maintain the right to remove Kirino as a reference if after investigation it is concluded that Kirino can be removed as a reference. In view of the above, and to expedite allowance, applicants respond to the present rejections over Kirino US as if the rejections were made over Kirino (*i.e.*, over the PCT counterpart of Kirino US and the Japanese counterpart of Kirino US).

According to MPEP §2131, "to anticipate a claim, the reference must teach every element of the claim." A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

¹ Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. §103 via 35 U.S.C. §102(e) was disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." This amendment to 35 U.S.C. §103(c) was made pursuant to section 4807 of the American Inventors Protection Act of 1999 (AIPA); see Pub. L. 106-113, 113 Stat. 1501, 1501A-591 (1999).

Regarding claim 1, claim 1 among numerous additional elements recites the element of “a transmission device for receiving a list of frequencies that are judged to be unlikely to cause mutually detrimental disturbance between themselves and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution.” Applicants are unable to locate any teachings or suggestion in the referenced sections of Kirino relating to “a transmission device for receiving a list of frequencies that are judged to be unlikely to cause mutually detrimental disturbance between themselves and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution.” Relied on sections of Kirino are as follows (sections of the corresponding Kirino US Patent No. 7,209,746 are referenced for convenience):

Moreover, the present invention relates to a transmission apparatus and a transmission method which solve radio interference and prevent interception, in the case where a plurality of apparatuses are used simultaneously in a multiple dwelling house or the like where the use wave areas may overlap uncertainly. Col. 1, lines 28-33

Here, the frequencies which are available for video transmission are the frequency bands designated by 307 in FIG. 6. These frequencies 307 available for video transmission have no broadcast wave 305, no external noise, and no image reception of a strong broadcast wave. Col. 15, lines 1-5

The control circuit 123 of the receiving apparatus 117 reads the list of the frequencies available for video transmission which are stored in the storage circuit 124, and stores it again in this storage circuit 124 as a communication frequency list, and then transmits it to the transmission apparatus 101 through the communication terminals 119 and 103. Col. 15, lines 30-36

In parallel with this, the control circuit 107 sets the attenuation of the variable attenuator 114 to the maximum and, thereafter, operates the RF converter 102. Further, the control circuit 107 spreads the power spectrum by rapidly changing the RF frequency of the RF converter 102, within the range of the communication frequency list which has been read, in accordance with the frequency changing order shown in table 1 and, thereafter, reduces the attenuation of the variable attenuator 114 to start transmission. Col. 15, lines 46-58

For the reasons described above, according to the transmission apparatus of this embodiment which uses the frequency band of the standard television broadcasting and spreads the spectrum for transmission, it is possible to realize transmission at a higher output power than that of the conventional system using a single frequency. Since the reception power increases with the output power, the transmission distance can be increased. Col. 17, lines 24-29

In this third embodiment, two pieces of transmission/reception apparatuses, each having a transmission apparatus and a receiving apparatus according to the second embodiment, are provided. Col. 19, lines 14-17

In the second transmission/reception apparatus 201B, since the communication frequency list has been changed, the transmission signal from the first transmission/reception apparatus which has been detected is lost. However, after a predetermined period of time, it resumes detection of the transmission signal from the first transmission/reception apparatus and the above-described series of responding operations by using the second communication frequency list which has been formed. Also in the first transmission/reception apparatus, since the communication frequency list has been changed, the transmission signal from the second transmission/reception apparatus which has been detected is lost. However, after a predetermined period of time, it resumes detection of the transmission signal from the second transmission/reception apparatus by using the second communication frequency list which has been formed, whereby duplex communication is reestablished. Col. 24, line 62 - Col. 25, line 12

Examining the relied on sections of Kirino, it appears that Kirino makes some reference to a frequency list. However, applicants are unable to discern any teaching or suggestion of Kirino relating to “a list of frequencies that are judged to be unlikely to cause mutually detrimental disturbance between themselves and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution” as recited in the specific context of claim 1. If the Examiner wishes to maintain the rejection over Kirino, the Examiner is respectfully requested to explain where in Kirino there is a teaching or suggestion relating to “a transmission device for receiving a list of frequencies that are judged to be unlikely to cause mutually detrimental disturbance between themselves and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution” in the context in which the noted elements are recited in claim 1.

Regarding claim 10, claim 10 among numerous additional elements recites the element of “a transmission device for receiving a list of frequencies that are judged to be unlikely to cause mutually detrimental disturbance between themselves and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution.” Applicants are unable to locate any teachings or suggestion in the referenced sections of Kirino relating to “a transmission device for receiving a list of

frequencies that are judged to be unlikely to cause mutually detrimental disturbance between themselves and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution” as recited in the specific context of claim 10.

If the Examiner wishes to maintain the rejection of claim 10 over Kirino, the Examiner is respectfully requested to explain where in Kirino there is a teaching or suggestion relating to “a transmission device for receiving a list of frequencies that are judged to be unlikely to cause mutually detrimental disturbance between themselves and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution” in the context in which the noted elements are recited in claim 10.

Regarding claim 18, claim 18 recites the element of “a reception device for receiving a digital modulated wave transmitted at frequency that is judged to be unlikely to cause mutually detrimental disturbance between itself and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution.” As indicated in the arguments presented as to claim 1, it appears that Kirino makes some reference to a frequency list. However, applicants are unable to locate any teaching or suggestion in the referenced sections of Kirino relating to “a reception device for receiving a digital modulated wave transmitted at frequency that is judged to be unlikely to cause mutually detrimental disturbance between itself and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution.”

If the Examiner wishes to maintain the rejection of claim 18 over Kirino, the Examiner is respectfully requested to explain where in Kirino there is a teaching or suggestion relating to “a reception device for receiving a digital modulated wave transmitted at frequency that is judged to be unlikely to cause mutually detrimental disturbance between itself and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution” in the context in which the noted elements are recited in claim 18.

Regarding claim 24, claim 24 among numerous additional elements recites the element of “a frequency list sending device for sending a list of frequencies that are judged to be unlikely to cause mutually detrimental disturbance between themselves and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution.” As indicated in the arguments presented as to claim 1, it appears that Kirino makes some reference to a frequency list. However, applicants are unable to locate any teachings or suggestion in the referenced sections of Kirino relating to “a frequency list sending device for sending a list of frequencies that are judged to be unlikely to cause mutually detrimental disturbance between themselves and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution.” If the Examiner wishes to maintain the refection over Kirino, the Examiner is respectfully requested to explain where in Kirino there is a teaching or suggestion relating to “a frequency list sending device for sending a list of frequencies that are judged to be unlikely to cause mutually detrimental disturbance between themselves and the other users who are allowed to use a TV broadcast frequency spectrum by a public institution” in the context in which the noted elements are recited in claim 24.

Further regarding claim 24, claim 24 among numerous additional elements recites the element of “the transmission device does not transmit the digital modulated wave when the frequency list is not updated within a previously determined period.” Applicants are unable to locate any teachings or suggestion in the referenced sections of Kirino relating to “the transmission device does not transmit the digital modulated wave when the frequency list is not updated within a previously determined period” as recited in the specific context of claim 24. If the Examiner wishes to maintain the refection over Kirino the Examiner is respectfully requested to explain where in Kirino there is a teaching or suggestion relating to “the transmission device does not transmit the digital modulated wave when the frequency list is not updated within a previously determined period” in the context in which the noted elements are recited in claim 24.

Regarding the claims discussed herein, the applicants' selective treatment and emphasis of independent claims of the application should not be taken as an indication that the applicants believe that the Examiner's dependent claim rejections are otherwise sufficient. Applicants expressly reserve the right to present arguments traversing the propriety of the dependent claim rejections later in the prosecution of this or another application.

While the applicants herein may have highlighted a particular claim element of a claim for purposes of demonstrating an insufficiency of an examination on the part of an Examiner, the applicants highlighting of a particular claim element for such purpose should not be taken to indicate that the applicants have taken the position that a particular claim element constitutes the sole basis for patentability out of the context of the various combinations of elements of the claim or claims in which it is present.

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

No amendment presented herein contains new matter.

Accordingly, in view of the above amendments and remarks, the applicant believes all of the claims of the present application to be in condition for allowance and respectfully request reconsideration and passage to allowance of the application.

If the Examiner believes that contact with applicant's attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call applicant's representative at the phone number listed below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to deposit Account No. 50-0289.

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Respectfully submitted,

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